



INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1167 (Rescission)]

Certain Laparoscopic Surgical Staplers, Reload Cartridges, and Components Thereof;

Notice of Commission Determination to Institute a Rescission Proceeding; Rescission of the

Remedial Orders; Termination of the Rescission Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute a rescission proceeding and to grant an unopposed petition to rescind the limited exclusion order (“LEO”) and cease and desist orders (“CDOs”) (collectively, “the remedial orders”) issued in the underlying investigation. The rescission proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 708-5453. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 5, 2019, based on a complaint filed by Ethicon LLC of Guaynabo, PR; Ethicon Endo-surgery, Inc. of Cincinnati, Ohio; and Ethicon US, LLC of Cincinnati, Ohio (collectively, “Ethicon”). 84 FR 32220 (July 5, 2019); *see also* 84 FR 65174 (Nov. 26, 2019) (amending the caption). The complaint alleged violations of section 337 of the Tariff Act of 1930, as

amended, 19 U.S.C. 1337, based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain reload cartridges for laparoscopic surgical staplers by reason of infringement of one or more claims of U.S. Patent Nos. 9,844,379 (“the ’379 patent”); 9,844,369; 7,490,749; 8,479,969; and 9,113,874. 84 FR at 32220. The Commission’s notice of investigation named the following as respondents: Intuitive Surgical Inc. of Sunnyvale, CA; Intuitive Surgical Operations, Inc. of Sunnyvale, CA; Intuitive Surgical Holdings, LLC of Sunnyvale, CA; and Intuitive Surgical S. De R.L. De C.V. of Mexicali, Mexico (collectively, “Intuitive”). *Id.* The Office of Unfair Import Investigations did not participate in this investigation. *Id.*

On October 14, 2021, the Commission issued a final determination finding a violation of section 337 with respect to certain laparoscopic surgical staplers, reload cartridges, and components thereof that infringed certain claims of the ’379 patent. The Commission issued an LEO against respondents’ infringing articles and CDOs against Intuitive. The Commission concurrently suspended enforcement of those orders pending the final resolution of a Final Written Decision issued by the Patent Trial and Appeal Board (“PTAB”) of the U.S. Patent and Trademark Office on March 26, 2021, finding all claims of the ’379 patent to be unpatentable.

On May 23, 2022, the United States Court of Appeals for the Federal Circuit affirmed the PTAB’s Final Written Decision finding the claims of the ’379 patent unpatentable. *Ethicon LLC v. Intuitive Surgical, Inc.*, Nos. 2021-1995, 2021-1997, 2022 WL 1613188 (Fed. Cir. May 23, 2022). The Federal Circuit issued its mandate in that appeal on June 29, 2022, and Ethicon has since indicated that it does not intend to seek further review of the decision.

On July 18, 2022, Intuitive filed an unopposed petition to rescind the remedial orders as to the ’379 patent based on a change of the conditions that led to the Commission’s issuance of those orders, *i.e.*, the Federal Circuit’s affirmance of the PTAB’s finding that the claims of the ’379 patent are unpatentable. No responses to the petition were filed.

Having reviewed the petition and the Federal Circuit’s decision in *Ethicon LLC v.*

Intuitive Surgical, Inc., the Commission finds that the conditions which led to the issuance of the remedial orders no longer exist, and therefore, granting the unopposed petition to rescind is warranted under section 337(k) (19 U.S.C. 1337(k)). The Commission also finds that the requirements of Commission Rule 210.76(a) (19 CFR 210.76(a)) are satisfied. Accordingly, the Commission has determined to institute a rescission proceeding and to grant the petition to rescind the remedial orders. The rescission proceeding is terminated.

The Commission vote for this determination took place on August 15, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: August 15, 2022.

William Bishop,

Supervisory Hearings and Information Officer.

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